

# DELAWARE NURSING HOME RESIDENTS QUALITY ASSURANCE COMMISSION

Herman M. Holloway, Sr. Campus – Room 301  
1901 N. DuPont Highway, New Castle, DE

Meeting of September 13, 2005  
MINUTES

Commission Members Present: Patricia C. Engelhardt; Karen E. Gallagher; Vicki L. Givens; Joseph M. Letnaunchyn; Sen. Robert I. Marshall; Thomas P. McGonigle, Esq. (Chairman); Yrene E. Waldron; Dr. McKinley Wardlaw, Jr.

Commission Members Absent: Walter E. Ferris; Rep. Pamela S. Maier; Brian L. Posey

Others Present: Sean Finnigan (Senate Staff); Carol Lovett (Consumer); June Valentine, Executive Director (Delaware Association of Homes & Services for Aging); Laura Waterland, Esq. (Disabilities Law Program); Tom Murray, Deputy Director; Mitzi Murphy and Joan Reynolds, Support Staff (Division of Long Term Care Residents Protection, DHSS).

## 1. Call to Order.

The meeting was called to order at 10:08 AM.

## 2. Approval of the Minutes.

Minutes for June 14, 2005 were approved as written.

Minutes for July 12, 2005 were approved as written with the addition of “Consumer” to identify Mr. Chauncey Bailey.

## 3. Discussion

- Durable Medical Equipment issue with Laura Waterland, Esq., Disabilities Law Program

Ms. Waterland specified that she would be discussing the need for power wheelchairs in nursing homes for those residents who need them to maintain their independence. A memo entitled “Medicaid Payment for Durable Medical Equipment for Nursing Home Residents” was distributed to Commission members and to all others present. Ms. Waterland quoted from the Delaware Long Term Care Provider Manual; Section 3.4 emphasizing that by regulation nursing homes are required to supply non-customized durable medical equipment including power wheelchairs as part of the per diem rate. Medicaid will pay for customized durable medical equipment that’s basically modified so that only the individual can use it. This is a very narrow definition which is part of the problem. Medicaid has so regulated that it will pay only for the extremely customized, very expensive power wheel chairs. There are not many individuals who require that level of customization. Consequently, Medicaid pays for very few power wheelchairs in nursing home situations. A disparity occurs because individuals on Medicaid assistance, living in the community, have access to power wheelchairs. It has been Ms. Waterland’s experience that this is a statewide issue; that a number of facilities are not providing power wheelchairs to residents who need them. Referring to one of Ms. Waterland’s cases she said an administrative appeal was made due to Medicaid’s refusal to pay for a power wheelchair prescribed for a nursing home resident. State regulation says that unless it is customized the wheelchair is part of the per diem rate and these chairs are considered a capital cost that can be used for depreciation. In Ms. Waterland’s experience this range of equipment is not provided. Either regulations should be enforced so that nursing homes provide this range of equipment or get the state to start paying for it. Chairman McGonigle asked if it is feasible for nursing homes to do this. It would appear that Medicaid needs to take a look at whether they should modify their regulations. To clarify the question of whether or not there are any power wheelchairs in Delaware nursing homes, the Chairman asked Tom Murray to have DLTCRP survey the number of power wheelchairs and the perceived need for them in state long term care facilities. Ms. Givens said that in her facility problems with Medicaid not paying for prescribed medications causes the facility to absorb the extra costs for the betterment of patients. Discussion followed about less government funding and the reimbursement for facilities to provide for every patient’s needs.

- Administrative Staff hiring for DNHRQA Commission

Chairman McGonigle discussed background of the draft posting for an Administrative Specialist II. It is placed in the budget lines of the courts. Mr. McGonigle has met with officials from the Administrative Office of the Courts who have secured office space in the Old Family Court with a file room and access to conference rooms. The acquiring of necessary office equipment is presently in process. Chairman McGonigle will follow up on the question of how the Administrative Specialist would interact with current support staff. There has been no modification in the provision of the law that specifies that DLTCRP is to provide support staff. Support staff volunteered their full cooperation with the proposed new full-time staffer. After members were asked to review and comment on the draft posting, a motion to accept the posting as it is currently presented was passed. The Chairman suggested that a subcommittee interview candidates for the position then make their recommendations to the full Commission. Serving on the subcommittee are Chairman McGonigle, Ms. Engelhardt, and Ms. Givens.

- DNHRQA Commission Annual Report for 2003, 2004, 2005
  - Background and Agency Review – Divisions monitoring Eagles Law were reviewed
  - Legislative and Trends – Ms. Waldron will e-mail the report.
  - Outreach - Ms. Engelhardt gave members a copy of the revised report, “Outreach”
- DNHRQA Commission Subcommittee Reports
  - Quality Initiatives Subcommittee – Ms. Engelhardt gave copies to members of “Culture Change Position Statement for DNHRQA Commission”

#### 4. Old Business/New Business

In answer to a question of whether a member attending by conference call, can be included in a quorum, Chairman McGonigle explained that the interpretation of the Delaware Freedom of Information Act by the Office of Attorney General mandates the actual presence of the member

The 4<sup>th</sup> Annual Residents’ Rights Rally-Thursday, October 6, 2005 - “The Art & Heart of Home.” Pat Engelhardt will represent AARP and Yrene Waldron will represent the Commission. Sen. Marshall will attend and give a short talk about the DNHRQA Commission.

Discussion followed concerning issues with the scheduling and inflexibility of DART services for the disabled in both the community and facilities from all 3 counties. Chairman McGonigle stated that the DNHRQA Commission has no authority to solve these issues. Sen. Marshall said he believes the transportation authority, DelDot, (Delaware Department of Transportation) is under review of the Joint Sunset Committee (JSC) this year. Preceding public hearings information can be provided privately to the committee. Ms. Gallagher was advised to give factual information to Sean Finnigan, Senate staff or Deborah Puzzo, staff to the JSC. Sen. Marshall will notify Ms. Gallagher, Ms. Waldron and all other Commission members when those hearings are to take place.

Ms. Engelhardt reported the National Citizens Coalition for Nursing Home Reform (NCCNHR) issued a 10-point statement. Included is a request for 100% federal Medicaid matching funds for nursing home and long term care services for evacuees affected by the recent hurricane and funding for adequate staff to support the extra care needed.

Ms. Waldron reported on Delaware facilities that have taken in evacuees from Louisiana. The American Health Care Association is taking donations ([www.ahca.org](http://www.ahca.org)). Posted at this site is a list of what nursing home residents and facilities need in Mississippi and Louisiana. Delaware has evacuation plans in place for facilities but in light of recent disasters, Chairman McGonigle suggested a thorough review be made of those plans.

DLTCRP Regulations: Of 12 sets of Regulations to be reviewed about one-half have been completed.

#### 6. Public Comment

Tim Hoyle, Ombudsman; Social Service Administrator (DSAAPD) has left state government.

7. The next meeting will be October 4, 2005 at 10:00 AM. The location will be the DHSS Campus, Main Building, Room 198.

8. Adjournment

The meeting was adjourned at 11:40 AM.

FINAL MINUTES – The September 13, 2005 Minutes were approved as written.